

03 MAY 15 PM 4:06
ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

Docket No. TSCA-07-2003-0150

Introduction

The Complainant, by delegation from the Administrator of the United States Environmental Protection Agency (EPA), and the Regional Administrator, EPA, Region 7, is the Director, Air, RCRA, and Toxics Division, EPA, Region 7. The Respondent is Kirby Music, 2917 E. Grand Avenue, Des Moines, Iowa 50317.

Complainant's Allegations

Complainant has reason to believe that Respondent has violated Section 409 of TSCA, 15 U.S.C. § 2689, by failing to comply with the regulatory requirements of 40 C.F.R. part 745, subpart F - Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property ("Disclosure Rule"), which was promulgated pursuant to Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d. Specifically, Complainant alleges:

Count I

1. Kirby Music ("Respondent") is an individual person.
2. For all periods of time relevant to the violation alleged herein, Respondent owned a residential property located at 2921 E. Grand Avenue, Des Moines, Iowa (the "Property").
3. The Property was constructed prior to 1978.
4. The Property is "target housing" as defined by 40 C.F.R. § 745.103.
5. On or about February 12, 2001, Respondent entered into a rental agreement (the "Contract") with William and Amy Anderson for the lease of Respondent's Property for residential use.
6. As a result of the Contract described in Paragraph 5 above, Respondent became a "lessor," and William and Amy Anderson became "lessees," as those terms are defined by 40 C.F.R. § 745.103.
7. William and Amy Anderson subsequently moved into the Property along with two children.
8. Pursuant to 40 C.F.R. § 745.107(a)(1), before the lessee is obligated under any contract to lease target housing, the lessor of target housing must provide the lessee with an EPA-approved lead hazard information pamphlet.

9. Respondent did not provide an EPA-approved lead hazard information pamphlet to William and Amy Anderson prior to being obligated under the rental Contract described in Paragraph 5 above.

10. Respondent's failure to provide an EPA-approved lead hazard information pamphlet to William and Amy Anderson prior to being obligated under the rental Contract described in Paragraph 5 above is a violation of 40 C.F.R. § 745.107(a)(1) and Section 409 of TSCA.

CONSENT AGREEMENT

1. For the purposes of this proceeding, Respondent admits that Complainant has jurisdiction to bring this action pursuant to the statutory and regulatory provisions cited above, and neither admits nor denies Complainant's factual allegations above.

2. Respondent waives his right to contest Complainant's allegations above, and his right to appeal the Final Order accompanying this Consent Agreement.

3. Respondent and Complainant agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

4. Respondent certifies by the signing of this Consent Agreement and Final Order that to the best of Respondent's knowledge, he is presently in compliance with all requirements of 40 C.F.R. part 745, subpart F - Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property ("Disclosure Rule").

5. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a civil penalty in the amount of Five Hundred Dollars (\$500) to be paid within forty-five (45) days of the effective date of the Final Order.

6. Respondent understands that his failure to timely pay any portion of the penalty stated in Paragraph 5 above may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case,

interest shall accrue thereon at the rate determined by the Secretary of the Treasury (currently two percent (2%) per annum for the period January 1, 2003, through December 31, 2003) on the unpaid balance until such civil penalty and any accrued interest are paid in full. Additionally, as provided by 31 U.S.C. § 3717(e)(2), a six percent (6%) per annum penalty (late charge) may be assessed on any amount not paid within ninety (90) days of the due date.

Final Order

Pursuant to the provisions of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2601 *et seq.*, and based upon the information set forth in the Consent Agreement accompanying this Final Order, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a civil penalty of Five Hundred Dollars (\$500) due within forty-five (45) days of the effective date of the Final Order. Such payment shall identify the Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and remitted to:

U.S. Environmental Protection Agency, Region 7
c/o Mellon Bank
P.O. Box 360748M
Pittsburgh, Pennsylvania 15251.

2. A copy of the check must be sent simultaneously to each of the following:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 7
901 N. 5th Street
Kansas City, Kansas 66101; and

Becky Ingram Dolph
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
901 N. 5th Street
Kansas City, Kansas 66101.

3. Respondent and Complainant shall bear their own costs and attorneys' fees incurred as a result of this matter.

RESPONDENT:
KIRBY MUSIC
DES MOINES, IOWA

Date 4.24.03

By

Kirby Music

COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

Date 5/1/03

By

William A. Spratlin

for
Director

Air, RCRA, and Toxics Division

Date 5/5/03

By

Becky Ingrum Dolph

Deputy Regional Counsel

IT IS SO ORDERED. This Final Order shall become effective immediately.

Robert L. Patrick
Robert L. Patrick
Regional Judicial Officer

Date

May 15, 2003

IN THE MATTER OF Kirby Music, Respondent
Docket No. TSCA-07-2003-0150

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:


Copy hand delivered to
Attorney for Complainant:

Becky Ingrum Dolph
Deputy Regional Counsel
Regulatory Programs
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by U.S. Certified Mail,
Return Receipt Requested, to:

Kirby Music
2917 E. Grand Avenue
Des Moines, Iowa 50317

Dated: 5/16/03


Kathy Robinson
Regional Hearing Clerk